

# COMMISSION OF THE EUROPEAN COMMUNITIES

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## PROPOSAL FOR A COUNCIL REGULATION

containing provisions to enable the International Atomic Energy Agency  
to carry out inspections and verifications in the territories of the Member  
States of the European Atomic Energy Community

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(Submitted by the Commission to the Council)



COMMUNICATION TO THE COUNCIL

Subject : Proposal for a Council Regulation containing provisions to enable the International Atomic Energy Agency to carry out inspection and verification activities in the territories of the Member States of the European Atomic Energy Community

The safeguards agreement signed on 5 April 1973 by the European Atomic Energy Community, the seven Community non-nuclear weapon States, and the International Atomic Energy Agency in implementation of the Treaty on the Non-Proliferation of Nuclear Weapons is due to enter into force in the near future.

This agreement comprises a number of obligations which are incumbent, in most cases, on the Community as such, but which in certain cases are incumbent directly upon each Member State party to the agreement. Thus each of these States is, in particular, obliged to accept the inspection and verification activities which the Agency is entitled to carry out under the terms of the agreement.

In order to meet this obligation, the States should take the necessary legislative and administrative measures to enable the Agency to exercise its rights. Obviously it is in the interest of all parties to the agreement that the provisions adopted for this purpose at national level be as homogeneous as possible, in order to avoid any discrimination or disparity of treatment and to ensure uniform implementation of the agreement in all countries where it has to be applied.

One of the most efficient ways of ensuring this would be to lay down, at Community level, rules designed to enable the Agency to exercise its rights effectively in all the States party to the agreement. These rules might be adopted in accordance with the provisions of Article 203 of the Euratom Treaty.

Furthermore, in addition to the seven Member States mentioned above, another Member Country which is a nuclear-weapon State has just concluded a similar safeguards agreement with the EAEC and the IAEA on a voluntary basis. Other particular safeguards agreements might be concluded at some time in the future by the Member State which has not so far concluded any such agreements.

It seems appropriate, therefore, for the same reasons as those mentioned above, that the rules adopted at Community level should also be applicable in the two Community nuclear-weapon States to the extent that this is called for by the particular safeguarding obligations that those States have assumed or might assume.

In conclusion, the Commission considers that in the present instance all the conditions for the implementation of Article 203 of the Euratom Treaty are fulfilled, and proposes that the Council adopt the Regulation which is enclosed in draft.

D R A F T

Proposal for a Council Regulation containing provisions to  
enable the International Atomic Energy Agency to carry out  
inspection and verification activities in the territories  
of the Member States of the European Atomic Energy Community

The Council of the European Communities

Having regard to the Treaty establishing the European Atomic  
Energy Community, and in particular Article 203 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Whereas, pursuant to Article 2(e) of the Treaty, the Community  
is required to ensure, through appropriate safeguards, that  
nuclear materials are not diverted to purposes other than  
those for which they were intended;

Whereas, pursuant to Article 2(h) of the Treaty, the Community  
is likewise required to establish all such relations with in-  
ternational organizations as are likely to further progress in  
the use of nuclear energy for peaceful purposes;

Whereas, with a view to contributing to the achievement of these objectives, the Community, together with the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, and the Kingdom of the Netherlands (hereinafter referred to as "Member States parties to the Agreement") have concluded with the International Atomic Energy Agency (hereinafter referred to as "the Agency") an Agreement in implementation of Article III (1) and (4) of the Treaty on the Non-Proliferation of Nuclear Weapons (hereinafter referred to as "the Agreement");

Whereas this Agreement establishes the right of the Agency to carry out, in accordance with the procedures and conditions set out in the Agreement, inspection and verification activities in the territories of the Member States parties to the Agreement;

Whereas, in order to avoid any discrimination or disparity of treatment and ensure uniform implementation of the provisions of the Agreement in all the Member States parties to the Agreement, rules must be laid down at Community level to enable the Agency to exercise this right;

Whereas, for the same reasons, it is likewise necessary to establish, at Community level, sanctions and measures of restraint to ensure the effective exercise of the Agency's right;

Whereas, for the same reasons, rules must be laid down at Community level to enable the Agency to carry out inspection and verification activities in the territories of the Member

States not party to the Agreement, to the extent that this is called for by the particular safeguarding agreements concluded between those Member States, the Community and the Agency;

Whereas the adoption of such rules by the Community therefore proves necessary to attain the aforementioned objectives of the Treaty,

Whereas the Treaty has not provided the necessary powers,

has adopted this regulation :

Article 1

This Regulation is applicable to persons or undertakings who manufacture, use or store, in any way whatsoever, source materials or special fissionable materials (hereinafter referred to as "the persons or undertakings") in the territories of the Member States parties to the Agreement.

This Regulation is applicable likewise to persons or undertakings in the territories of Member States not parties to the Agreement in so far as they manufacture, use or store, in any way whatsoever, source materials or special fissionable materials subject to safeguards under particular agreements (hereinafter referred to as "the Particular Agreements") concluded between those States, the Community and the Agency, subject to the publication in the Official Journal of the European Communities of a Communication to this effect from the Commission.

Article 2

The persons and undertakings shall permit and facilitate Agency inspection and verification activities in accordance with the provisions of this Regulation.

Article 3

The persons and undertakings shall permit the Agency to carry out inspections for the purpose of verifying the fundamental technical characteristics of the facilities specified in Articles 2 to 4 of Commission Regulation ..... (hereinafter referred to as "the Commission Regulation").

Article 4

The persons and undertakings shall permit the Agency to make ad hoc inspections to verify the information supplied by the Commission on the basis of the initial report provided for in Article 12 of the Commission Regulation, and any changes that have occurred between the date of the initial report and the date of entry into force of the Subsidiary Arrangements to the Agreement or the Particular Agreements, in so far as they relate to the persons and undertakings aforesaid.

For this purpose, the persons and undertakings shall grant Agency inspectors access to the strategic points specified in the particular safeguard provisions adopted by the Commission, or, in default of such provisions, to all locations where source or special fissile material is to be found.



Article 5

The persons and undertakings shall permit the Agency to carry out ad hoc inspections in order to identify, and if possible verify the quantity and composition of, source materials or special fissionable materials imported or designated for exportation, which have been declared in accordance with Articles 18 and 19 of the Commission Regulation.

For this purpose, the persons and undertakings shall grant the Agency's inspectors access to any location notified to the Commission in accordance with Articles 18c), 3rd indent, or 19c), 2nd indent.

Article 6

The persons and undertakings shall permit the Agency to make routine inspections in order to :

- a) verify that the information supplied to it by the Commission on the basis of the reports specified in Articles 13 and 17 of the Commission Regulation are consistent with records;
- b) verify the location, identify, quantity and composition of all source materials and special fissionable materials;
- c) verify information on the possible causes of material unaccounted for, shipper/receiver differences and uncertainties in the book inventory.

For this purpose, the persons and undertakings shall grant the Agency inspectors access to the strategic points referred to in Article 4 of this Regulation as well as to the accounting

records kept in accordance with Articles 8 to 10 of the Commission Regulation.

In respect of facilities and material balance areas outside facilities with a content or annual throughput, whichever is the greater, of nuclear material not exceeding five effective kilograms, the Agency may carry out one routine inspection per year under the provisions of this Article.

In all other cases, the frequency and intensity of the Agency's inspections under the provisions of this Article shall be indicated in the particular safeguard provisions referred to in Article 4 of this Regulation.

#### Article 7

The persons and undertakings shall permit the Agency to carry out special inspections, in addition to the routine inspections provided for in Article 6 of this Regulation, in the following cases :

- a) in order to verify the information contained in the special reports provided for in Article 16 of the Commission Regulation;
- b) if the Agency considers that the information made available by the Commission including explanations from the Commission and information obtained from routine inspections, is not adequate for the Agency to fulfil its responsibilities under the Agreement or under the Particular Agreements.

In the cases mentioned above, the persons and undertakings shall furthermore grant the Agency access to locations or information

other than those referred to in Articles 4 to 6, if this is provided for by an individual decision of the Commission.

#### Article 8

Without prejudice to Articles 10 and 11 of this Regulation, the persons and undertakings shall permit the Agency inspectors to carry out the following activities within the context of the inspections provided for in Articles 4 to 7 :

- a) examine the records kept pursuant to Articles 8 to 10 of the Commission Regulation;
- b) make independent measurements of all source materials and special fissile material;
- c) verify the functioning and calibration of instruments and other measuring and control equipment;
- d) apply and make use of surveillance and containment measures;
- e) use other objective methods which have been demonstrated to be technically feasible.

The persons and undertakings shall enable Agency inspectors engaged in these activities to :

- a) observe that samples at key measurement points for material balance accountancy are taken in accordance with procedures which produce representative samples;
- b) observe the treatment and analysis of the samples;
- c) obtain duplicates of the samples drawn from the same randomly selected batches or items as those intended for the Community, and taken together with Community samples;

- d) observe that the measurements of nuclear material at key measurement points for material balance accountancy are representative;
- e) observe the calibration of the instruments and equipment involved.

The persons and undertakings shall furthermore allow Agency inspectors to use or install Agency equipment for independent measurement and surveillance, and to apply seals and other identifying and tamper-indicating devices to containments, if such is provided in the particular safeguard provisions referred to in Article 4 of this Regulation.

#### Article 9

Within the scope of the inspections carried out under the provisions of Articles 4 to 7 of this Regulation, and without prejudice to Articles 10 and 11, the persons and undertakings in so far as provision for this is made in the particular safeguard provisions referred to in Article 4 of this Regulation shall ensure that :

- a) additional measurements are made and additional samples taken for the Agency's use;
- b) the Agency's standard analytical samples are analysed;
- c) appropriate absolute standards provided by the Agency are used for the calibration of instruments and other equipment;
- d) other calibrations are carried out at the Agency's request;
- e) samples taken for the Agency's use are duly shipped.

Article 10

Without prejudice to Article 13 of this Regulation, the persons and undertakings shall permit the Agency inspectors to carry out the inspections provided for in this Regulation at the same time as the inspections carried out by the Community.

Without préjudice to Article 13 of this Regulation, the persons and undertakings shall permit the Agency inspectors, in the course of the ad hoc and routine inspections provided for in Articles 4 to 6 of this Regulation to carry out the activities specified in Articles 8 and 9 through the observation of certain inspection activities of the Commission's inspectors.

The persons and undertakings shall nevertheless permit the Agency inspectors to carry out independent inspection activities in the course of routine inspections if one of the following conditions is fulfilled :

- a) the activity is provided for in the particular safeguard provisions referred to in Article 4 of this Regulation;
- b) if, in the course of an inspection, the Agency inspectors declare that they find it essential and urgent that independent activities be undertaken, if the Agency cannot otherwise achieve the purposes of its routine inspections and if this was unforeseeable.

The persons and undertakings shall likewise permit Agency inspectors to carry out independent inspection activities during ad hoc inspections if, in the course of such an inspection, they affirm that this is necessary to enable the Agency to fulfil the objectives of its ad hoc inspections.

Article 11

The persons and undertakings are not required to permit Agency inspectors, in the course of their inspection activities, to operate any facility themselves, nor to direct the staff of a facility to carry out any operation.

If so requested by the Agency inspectors, the persons and undertakings shall give instructions for the carrying out of any operation necessary for the implementation of Articles 8 and 9 of this Regulation.

Article 12

In unusual circumstances, and in particular at the request of the persons and undertakings or the Member State concerned, the Commission may limit the Agency's right of access by individual decision.

Article 13

The persons and undertakings shall permit the Agency to make inspections :

- which are of greater frequency and intensity than the inspections provided for in the third and fourth paragraphs of Article 6 of this Regulation;
  - which entail more extensive rights of access than those specified in the particular safeguard provisions referred to in Article 4 of this Regulation,
- and

- which differ in procedure from those specified in Article 10 of this Regulation,

if provision for this is made by an individual decision of the Commission in cases where the conditions set out in Article 13 of the Protocol to the Agreement or to the Particular Agreement would not be fulfilled.

Article 14

The persons and undertakings shall grant Agency inspectors access to the facilities in accordance with the provisions of this Regulation on presentation of an Agency document establishing their authority, and also a Commission document indicating that the inspectors in question have been accepted by the Commission and the Member States.

Article 15

Where a person or undertaking is opposed to the carrying out of an Agency inspection, the Commission, if it finds that the inspection is in conformity with this Regulation, shall issue within three days, or immediately if there danger in delay, a written order in the form of an individual decision, to proceed with the inspection.

After the decision has been issued, the national authorities of the State concerned shall ensure that the Agency inspectors have access to the places specified in the decision.

If the Commission refrains from adopting the decision provided

for in this Article, and if there is danger in delay, the Member State concerned may compel the person or undertaking to permit the Agency's inspection if it finds that this inspection is essential in order to fulfil the obligations it has undertaken under the Agreement or the Particular Agreements.

#### Article 16

Article 83 of the Treaty establishing the EAEC applies to infringements on the part of the persons or undertakings of the obligations imposed on them by this Regulation.

#### Article 17

The Commission, within the time limits provided for in the Subsidiary Arrangements to the Agreement or the Particular Agreements, shall inform the Member States of :

- a) the results of the Agency's inspections ;
- b) the conclusions the Agency has drawn from its verification activities.

#### Article 18

The particular safeguard provisions referred to in Article 4 of this Regulation shall be issued by individual decision of the Commission, after a hearing has been given to the person or undertaking concerned and to the Member State concerned.

The individual decisions provided for in Articles 7, 9, 12, 13 and 15 of this Regulation shall be taken by the Commission after



a hearing has been given to the person or undertaking concerned and to the Member State concerned, except where there is danger in delay.

The person or undertaking affected by an individual Commission decision within the meaning of this Regulation shall receive notification thereof, and a copy of the notification shall be forwarded to the Member State concerned.

The individual decisions of the Commission provided for in this Regulation shall be in accordance with the relevant provisions of the Agreement or the Particular Agreement and with the Subsidiary Arrangements.

#### Article 19

The Member States concerned shall have the right to send their representatives to participate in the Agency inspections provided for in this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

